IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

Crl.Rev.Pet.No. 411 of 2007()

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CC.1147/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, THRISSUR

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REVN. PETITIONER: ACCUSED NO.3 AND 4 :

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1. C.G.RAJEEV, S/O.GANGADHARAN,
   PARTNER, M/S.HOTEL ARATHY, CHAMAKAD HOUSE,
   P.O.VADAKKENCHERY, PALAKKAD DISTRICT.

2. C.G.PRAVEEN, S/O.GANGADHARAN,
   PARTNER, M/S.HOTEL ARATHY,
   CHAMAKAD HOUSE, P.O.VADAKKENCHERY.

BY ADV. SRI.P.VIJAYA BHANU
SRI.PRASUN.S

RESPONDENTS: COMPLAINANT AND STATE

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1. MANOJ.N.M., S/O.MOHANAN,
   NELLIPARAMBIL HOUSE, P.O.KURUMPILAVU,
   THRISSUR DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
   THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI.M.S. BREEZ
R1 BY ADV. SRI.M.H.HANIL KUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 12/06/2007, A/W. CRMC 415 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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Crl.R.P.No. 411 of 2007 &
Crl.M.C.No. 415 of 2007

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Dated this the 12th day of June, 2007

**O R D E R**

The petitioners in these proceedings are accused 3, 4 and 5 in a prosecution initiated under Section 138 of the N.I. Act. Cognizance has been taken by the learned Magistrate. Accused 3 and 4 have come before this Court with Crl.R.P.411 of 2007 complaining about the cognizance taken, whereas the 5th accused has come with Crl.M.C. 415 of 2007 with a prayer to quash the proceedings initiated against him.

2. The crux of the allegations is that the first accused firm had issued a cheque to the respondent/complainant. That cheque was signed by the second accused Managing Partner of the firm. Accused 3, 4 and 5 are alleged to be the Partners of the firm. In paragraph 1 of the complaint there is an assertion that the second accused in his capacity as Managing Parter of the first accused "with the knowledge and consent of other accused issued the cheque in question." The petitioners pray that invoking the revisional jurisdiction of this Court, if not the extra ordinary inherent jurisdiction under Section 482

Cr.P.C., proceedings initiated against the petitioners may be quashed in as much as the complaint does not contain the requisite crucial and vital averments to attract culpability under Section 141 of the N.I. Act. Counsel for accused 3 to 5 rely on the decision in **S.M.S. Pharmaceuticals Ltd.** v. **Neeta Bhalla** (2005 (4) KLT 209 (SC). In as much as the necessary and vital averments are not there, the prosecution is liable to be quashed. This in short is the plea raised.

3. Of course, a contention is raised that the Partners have ceased to be Partners on the relevant date. That question cannot be considered with the materials presently available. The parties will have to be relegated to raise those contentions at the stage of trial. The crucial question that falls for determination is whether the complaint deserves to be quashed and cognizance deserves to be set aside for the reason that there is no crucial averment as insisted by the dictum in **S.M.S. Pharmaceuticals Ltd.**

4. Except that they are Partners and the Managing Partner had issued the cheque on behalf of the firm "with the knowledge and consent" of the petitioners herein there is no other averment whatsoever against the petitioners.

5. The learned counsel for the complainant was requested to explain how these averments can be held to be sufficient to attract penal liability under Section 141 of the N.I. Act read in the light of the decision cited supra. The learned counsel for the complainant contends that ritualistic insistence on repetition and re-iteration of the words of the Statute under Section 141 need not be insisted. I am in agreement with the learned counsel. Such insistence need not be made. Is there any averment which would satisfy the requirement of Section 141? That is the crucial question and that question has got to be answered against the complainant in the light of the only averment to which I have already referred to. That the petitioners are Partners and that the Managing Partner had issued the cheque "with the knowledge and consent" of the petitioners is certainly insufficient to attract culpability under Section 141. The dictum in **S.M.S. Pharmaceuticals Ltd.** remains totally unsatisfied by the specific averments, which I have referred to above.

6. It follows that the petitioners are entitled to succeed. These petitions are in these circumstances allowed. Cognizance taken against the petitioners (accused 3 to 5) for the offence under Section 138 of the N.I. Act

in C.C.1147 of 2006 pending before the J.F.C.M. Court -I, Thrissur is hereby quashed/set aside. The prosecution against the co-accused shall, needless to say, continue.

**(R. BASANT)**
Judge

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